Juvenile Law Reader

Youth, Rights & Justice
ATTORNEYS AT LAW

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Juvenile Law Resource Center

Breaking News: Supreme Court rules mandatory life without parole sentences for juveniles violate 8TH Amendment.

-- See Page 10 for press release

Following National Foster Care Month

June is National Reunification Month

By Mark McKechnie

The American Bar Association has designated June as National Reunification Month in recognition of the most common and most desirable outcome for children in foster care. In 2010, 63.2% of children leaving foster care in Oregon were reunified with one or both parents, compared to 18.6% who were adopted.

The U.S. Administration for Children and Families provides a summary of the research on family reunification, "Family Reunification: What the Evidence Shows," at www.childwelfare.gov/pubs/issue_briefs/family_reunification/index.cfm. Family engagement is an important precursor to reunification in many cases. Key elements of engagement include:

- The relationship between the caseworker and the family: Frequent contact between the case worker, parents and children is important. "Family engagement becomes meaningful when family members believe their involvement in case planning and services is valued and respectful of their potential to keep their children safe, provides them with the information they need to successfully advocate for themselves and their children, and enables them to access the services and resources they need to achieve reunification." (p. 6)

- Parent-child visitation: The report cites one study that visitation between children 12 and younger with their mothers increased the chances of reunification *tenfold*. Researchers have highlighted the importance of visitation for parents to increase skills and to improve the quality of parent-child interactions.

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• The involvement of foster parents: Foster parents' support of visitation is important, and foster parents may also play a mentoring role for the legal parents. Researchers have found that "The development of a positive relationship between the foster and birth parents may allow children to avoid the stress of divided loyalties and position foster parents to play a supportive role after reunification." They caution, however, that foster parents may need additional training to work effectively with biological parents and that this role requires "maturity, communication skills, [and an] ability to handle these multiple roles." (p. 7)

The report also highlights the importance of accurate and thorough assessment and planning in order to achieve successful reunification. One study found that poor assessments or decisions by the case worker or other service providers were factors in 42 out of 62 failed reunifications they studied.

Related to case planning, the report highlighted the importance of concrete services, such as food, transportation and housing assistance as factors leading toward successful reunification. Services also focused on helping families learn to access these supports for themselves after child welfare involvement ended. In one Illinois study, half of the families that were reunified demonstrated high utilization of concrete services and supports, such as transportation and financial assistance.

The ABA's web site on reunification provides other resources, including research on the involvement of fathers and the impact on reunification. In a review of nearly 2,000 cases, only 4% had a goal that one or more children would live with their fathers. Fathers had been contacted by the case worker in only 55% of cases. However, the research shows that high levels of involvement by fathers during the child welfare case positively impact the achievement and timeliness of reunification. Children whose fathers demonstrated high levels of involvement spent less time in foster care overall. Contrary to fears by case workers and others, involvement by fathers has *not* been associated with increases in repeat or subsequent maltreatment. See "More about the Dads: Exploring Associations between Nonresident Father Involvement and Child Welfare Case Outcomes." (http://www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/more_about_the_dads_report.authcheckdam.pdf)

Unfortunately, 2010, the last year for which data are currently available, saw a reversal of a trend for children leaving foster care in Oregon. During the prior four years, 2006 through 2009, more children left foster care than entered. In 2010, the number of children in foster care increased by 523, as more children entered than exited. Still, from 2006-2010, the total number of children in foster care statewide declined by 1,092. After seeing rates of reunification at 64% for children leaving foster care in 2006 and 2007, rates of reunification dropped below 60% in 2008-2009. Fortunately, these rates rebounded to 63% in 2010.

For more information on National Reunification Month, visit the ABA's web site at: http://www.americanbar.org/groups/child_law/what_we_do/projects/nrd.html.

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New $35 Million Grant Opportunity to Combat Family Homelessness

From the Administration for Children & Families (ACF) and Private Foundations

By Sydney Boling, Law Clerk

The Administration for Children & Families of the U.S. Department of Health and Human Services has teamed up with four national foundations (the Robert Wood Johnson Foundation, Annie E. Casey Foundation, Casey Family Programs (ACF), and Edna McConnell Clark Foundation) to provide grants supporting the development and expansion of triage procedures for families who come to the attention of the child welfare system due to housing issues and high levels of service needs, local implementation of supportive housing services, and case management services for parents and children.

Commissioner Bryan Samuels of the Administration for Children, Youth & Families noted that as more states move toward serving families outside of the foster care system, it is important to identify high needs families and provide services that can lead to family improvements by reducing child abuse, neglect, the number of foster care placements, and an increase in stability of housing and employment.

ACF will provide up to $1 million a year to five grantees for five years (totaling $5 million to each grantee, $25 million total). The four partnering national foundations

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will provide a combined total of $10 million over the five years for technical assistance and national evaluations of the effectiveness of the services.

Child-welfare agencies in partnership with local housing agencies and shelters are encouraged to apply. Further information is available at www.acf.hhs.gov and www.nchcw.org. Those interested may apply at www.grants.gov. (The funding opportunity title is "Partnerships to Demonstrate the Effectiveness of Supportive Housing for Families in the Child Welfare System"; the Funding Opportunity Number is HHS-2012-ACF-ACYF-CA-0538; the closing date for the applications is July 30, 2012. Grant recipients will be announced in September of 2012.) ●

Case Summaries

Dept. of Human Services v. C.M.M., __ Or App __, __ P3d__ (May 16, 2012) (Ortega, P.J.) (Marion Co.) http://www.publications.ojd.state.or.us/Publications/A149164.pdf

Mother appealed a judgment terminating her parental rights to her son, E, on grounds of unfitness. E was removed from the home at 5 months old after non-accidental injuries were observed on his half-brothers, B and T. Father was sentenced to 31 months incarcerations after admitting to abusing T. The juvenile court took jurisdiction over E after it concluded that mother had an unsafe partner and had failed to intervene to protect her children from father. It ordered no contact between mother and father.

Mother attended parent skill training and counseling. Her service providers reported that she demonstrated minimally adequate parenting skills and provided an appropriate home environment. Her psychological evaluation concluded that she had a personality disorder that left her dependent on father and that she placed that relationship above her children's needs. Mother never wavered from her belief that Father did not abuse B and T and contacted him while he was incarcerated, violating the court's no-contact order. Based on this evidence, the juvenile court terminated mother's parental rights, despite her minimally adequate parenting skills.

Mother appealed the termination judgment arguing that: (1) the juvenile court erred in its determination that she was an unfit mother; (2) the court violated her constitutional rights because it relied on evidence not in the petition; and (3) it was not in E's best interests to terminate her parental rights.

The Court of Appeals upheld the termination judgment. It found that mother was unfit to parent because she was unable or unwilling to end her relationship with father despite overwhelming evidence that he abused B and T. In light of mother's mental condition, it found that she was unlikely to change and recognize the risk posed by father toward her children. "Unwavering allegiance" to another unfit parent and failure to keep a child away from that parent can be seriously detrimental to a child. The petition was sufficient to establish mother's unfitness by clear and convincing evidence.

The court further found that it was in E's best interests to terminate mother's parental rights because he was bonded to his foster parents and they were willing to adopt him. Unlike mother, E's aunt and uncle could provide stability and permanence and protection from father.

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"Justice will not be served until those who are unaffected are as outraged as those who are."

– *Benjamin Franklin*

Per Curiam Decisions

Dept. of Human Services v. E.D.H. __ Or App __, __P3d__ (May 2, 2012) (Per Curiam)

Court did not err in not allowing mother to testify by telephone because she did not give written notice to all the parties. Remanded the permanency judgment because did not include description of DHS efforts toward implementing reunification plan.

Dept. of Human Services v. R.S., __ Or App __, __P3d__ (May 2, 2012) (Per Curiam)

Jurisdiction finding reversed because State failed to prove that child was endangered when father left child with his paternal grandmother without informing DHS.

Dept. of Human Services v. A.R.S., __ Or App __, __ P3d__ (May 2, 2012) (Per Curiam) (Washington Co.) http://www.publications.ojd.state.or.us/Publications/A149152.pdf

Mother and child appealed juvenile court's

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finding that mother had not made sufficient progress toward reunification. They argued the court had based its conclusion on the legally erroneous premise that Mother was required to demonstrate she could parent child independently.

The Court of Appeals agreed that the juvenile court had made a legal error in concluding that mother had to demonstrate she could parent independently, without the assistance of the child's maternal grandmother. Citing *Dept. of Human Services v. B.L.J.*, 246 Or App 767, 268 P3d 696 (2011), the court noted that the ability to parent independently is not a legal requirement for parental fitness and cannot be the basis of a determination of a parent's progress toward reunification. The juvenile court erred by relying on this requirement in its findings.

Dept. of Human Services v. L.G., __ Or App __, __P3d__ (May 31, 2012) (Per Curiam)

Father appealed jurisdictional judgment that required him to submit to random urinalysis. Reversed and remanded because dispositional judgment imposed a condition with no rational relationship to the jurisdictional finding. ●

Perspectives of Newer Juvenile Court Judges

The Juvenile Law Reader editorial board reached out to the Honorable Kathryn L. Villa-Smith, Multnomah County Circuit Court Judge, and the Honorable Lisa Grief, Jackson County Circuit Court Judge, to gain their perspectives as judges who are relatively new to the juvenile law bench.

How long have you been a judge on the juvenile law bench?

Villa-Smith: I have been on the bench for one year and three months [as of March 30, 2012,] so I am still very new to the job.

Grief: I have been on the juvenile bench since January of 2010.

What has surprised you most since joining the juvenile bench?

Villa-Smith: Coming from a civil domestic relations practice, I am surprised judges are responsible for preparing the orders and judgments for dependency and delinquency matters, as well as termination cases. The forms are long and can be confusing. All attorneys should have sufficient time to review the orders and approve the form of order.

Grief: I don't know if I can say I have been surprised by much as a judge, because I was a juvenile attorney in Jackson County, so I knew the system and all of the players well. I suppose I have more of an observation than a surprise. I am frustrated at times by the lack of resources and services in the juvenile justice and child welfare systems. I cannot understand why these agencies (and other community partners who help children and families) are not adequately funded and staffed. Also, it seems at times that the statutes, current case law, and DHS Child Welfare policies in dependency cases do not promote the best interest, health, and safety of, and lead to timely permanency for, children.

We need more treatment programs for our youth.

If you could change one thing, what would it be?

Villa-Smith: The lack of resources for adolescents. We need more treatment programs for our youth.

Grief: As I mentioned above, I would say that adequate funding that supports all of the "cogs of the wheel" should be a priority. We have learned that there is a better way to do business in terms of treatment courts, reconnecting families, having CASAs appointed to represent children, having relief nurseries and early childhood intervention programs, and the safe and equitable foster care reduction initiative. These programs save the taxpayers money. We should ensure that their funding is sustainable. Our children and families are worth it.

What practices do you observe (and encourage others to emulate) from the most effective lawyers?

Villa-Smith: The best lawyers are prepared and always professional. I have been impressed with the quality of the lawyers at JDH.

Grief: Spending time with their clients, especially when they represent children in dependency cases and youth in delinquency cases. Being a zealous advocate without being antagonistic. Having a good working relationship with the other attorneys, DHS Child Welfare caseworkers, CASAs, probation officers, foster parents, treatment providers, and other community partners. Being aware of the latest case law, DHS policies, state and federal legislation, etc. ●

"Few will have the greatness to bend history itself, but each of us can work to change a small portion of events. It is from numberless diverse acts of courage and belief that human history is shaped. Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope, and crossing each other from a million different centers of energy and daring those ripples build a current which can sweep down the mightiest walls of oppression and resistance."

– *Robert F. Kennedy*

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Studies Promote Trauma-Informed Programs, Collaboration Between Agencies

By Abigail Pfeiffer, Law Clerk

An estimated 75 percent of youth in the juvenile justice system have experienced a traumatic event. This is cause for major concern: children affected by trauma often struggle with language, concentration, understanding, responding in classroom interactions, problem solving, abstraction, forming relationships, regulating emotions, and a host of other problems. Behavioral manifestations of trauma also include risk taking, acting out, breaking rules—exactly the kind of behavior that may bring a youth into the juvenile justice system. Moreover, studies suggest that trauma symptoms may worsen as a result of experience with the juvenile justice or other child-serving justice systems, particularly if the effects of trauma are not recognized and managed.

A recent paper presented at the National Leadership Summit on School-Justice Partnerships: Keeping Kids in School and Out of Court, "*Responding to Students Affected by Trauma: Collaboration across Public Systems,*" examines the links connecting trauma and learning. Read the full paper at: http://school-justicesummit.org/pdfs/journal-web_paper_3.pdf. The paper concludes that trauma-informed school programs and care coordination between multiple agencies are the most effective approaches for helping high-risk youth. These approaches mirror the trend in recent court decisions related to juveniles, which acknowledge new findings in adolescent development which show youths are less culpable than adults. These findings have led some courts, states and local jurisdictions to shift responses to juvenile crime away from punishment and toward rehabilitation.

...trauma-informed school programs and care coordination between multiple agencies are the most effective approaches for helping high-risk youth.

The first component of the approach advocated by the paper encourages implementation of systems that can accurately determine the circumstances and needs of the children in the juvenile justice, education, and child welfare systems. This trauma-informed approach is particularly necessary because adult and institutional responses to children's behavior can critically impact their ability to cope with traumatic experiences.

For example, a child who has been affected by trauma might have behavioral difficulties that may result in harsh disciplinary practices by the school if the school fails to identify the underlying cause of the problematic behavior. A teacher might see anger rather than the effects of trauma and recommend suspension instead of counseling. Because of these problems in identification, schools struggle with balancing the needs of one high-risk student and the needs of the other students affected by the high-risk student's behavior in the classroom. This often leads to exclusionary punishment and referrals to the juvenile justice system. However, if schools establish environments that are compassionate or trauma-sensitive, they also establish settings where children who have been exposed to trauma can be identified and aided, while children who have not been impacted by trauma can learn through the sharing of experiences or behavioral responses in their trauma-affected peers.

The second component of the approach, coordinating care between multiple agencies, is particularly crucial because public agency caseworkers cannot be expected to educate youths and educators cannot be therapists or social workers. There are, however, three key areas where the actions of multiple systems intersect: (1) when schools decide to refer a youth who is acting out to the juvenile justice system, (2) how youth are educated in the juvenile justice system, and (3) how youth are transitioned back into educational settings from the juvenile justice system.

A good example of how this coordination can be used effectively is in family engagement. Family engagement has been shown

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"If someone is going down the wrong road, he doesn't need motivation to speed him up. What he needs is education to turn him around."

– *Jim Rohn*

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to be both one of the most important and the most difficult-to-address issues facing the juvenile justice system. However, challenging family circumstances may be among the reasons children are traumatized. School outreach to families before deciding to refer a youth to the juvenile justice system tends to only address the universal purposes of education and cannot force involuntary engagement. On the other hand, juvenile justice, child welfare, substance abuse and mental health agencies often work with hard-to-reach or involuntary clients. If the systems collaborate, family engagement can occur much earlier in the process, possibly preventing the youth from ever entering the justice system.

One other crucial point of engagement is attorney advocacy in child welfare, school and delinquency cases. Attorneys need to take the effect of trauma history into consideration in their advocacy. Just as the teacher might refer her "angry" student to the juvenile justice system instead of counseling, the attorney who does not understand her client's trauma history might be unable to advocate for them effectively. To be an effective advocate, it is important to assess a client's age and developmental experiences, intelligence, environment, and the levels and characteristics of the trauma the client has experienced. Without that knowledge, a trauma-affected client is just another kid with behavioral issues. After analyzing the client's particular situation, attorneys should use that information to advocate for resources, such as mental health services, safety planning, and support for families. Understanding the effects of trauma is necessary to be an effective advocate in order to better meet a client's needs and to obtain optimal legal outcomes. ●

Adolescents and Suicide

Ethics and Advice for Attorneys

By Del Webb, M.A., Social Work Intern

Representing an adolescent client who is experiencing an emotional disturbance can be a complex and challenging situation for any attorney; this is especially true in situations where a client may disclose thoughts of suicide, or an intention of committing suicide. Such disclosures can create discomfort for attorneys who are not trained in handling this issue, and also raise ethical concerns related to privilege and confidentiality. This article is intended to advise attorneys on the ethical considerations related to suicidal clients, and offer guidelines on how to help clients who make such disclosures. Most of the information and advice given in this article can be applied to any suicidal client, not just adolescents.

Ethical Guidelines

There are two significant portions of the Oregon State Bar Rules of Professional Conduct which govern whether attorneys who are concerned that a client may be suicidal can disclose this information to others. RPC 1.6 governs confidentiality of information; paragraph (b)(2) specifies that:

> (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary… (2) To prevent reasonably certain death or substantial bodily harm

Note that the exception to 'prevent reasonably certain death or substantial bodily harm' does not require that the act be considered a crime for the attorney to reveal information. The wording of the Oregon Rules is taken directly from American Bar Association' Model Code 1.6(b)(1); the ABA's commentary on the Code states that this paragraph:

> ….recognizes the overriding value of life and physical integrity and permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat.

Decisions on disclosing information about a suicidal client are also addressed in Oregon RPC 1.14, regarding clients with diminished capacity:

> (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian. [Emphasis added]

This portion of the Oregon RPC, which is again copied directly from the ABA Model Code 1.14(b), permits the attorney to contact professionals for assistance if needed. Commentary on the ABA Code provides further guidance; these can be found in the ABA's Annotated Model Rules of Professional Conduct[1].

Warning Signs of Suicide

The majority of people who are considering suicide will give some form of warning or clue that can alert others to their state of mind. These warning signs can include:

- Verbal threats of suicide, either direct (e.g., "I'm going to end it all", "I wish I was dead") or indirect (e.g., "I'm tired of life", "Everyone would be better off without me", "You won't have to worry about me soon")
- Sudden interest in topics related to death – for attorneys, this could come out as unexpected questions about wills, organ donation, life insurance claims, etc. For some, especially teens, thoughts of death could be expressed in poetry, artwork, or writing.
- Unusual changes in personality, appearance, or behaviors. This can be a somewhat arbitrary warning sign,

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especially for adolescents, who are naturally in a period of change and emotional turbulence. One change that can be particularly telling for a teen is sudden isolation from their peer group.

• A personal or family history of mental illness, particularly depression or bipolar disorder.

• Substance use or abuse, particularly alcohol.

• Major stressors (e.g. poverty, domestic violence, abuse, death in the family, medical problems, legal problems).

• A history of past suicide attempts (this is the best predictor of an eventual completed suicide).

The most common diagnosis associated with suicide is depression, a fact which is understood by most people. What may not be as obvious are some specifics in how suicidal thoughts manifest in depressed persons. A person with major depression who is in the deepest depths of their illness may be having strong suicidal thoughts, but because depression saps energy and purpose, the person may literally be unable to carry out a plan. As the depression lifts, however, a person may regain just enough motivation to be able to carry out a suicide plan. This is one of the reasons that patients who are just starting on antidepressants, especially adolescents, are closely monitored by their medical providers. Do not assume that just because someone has started treatment that they are 'out of the woods'.

Another aspect of depression and suicide not commonly known is that some individuals who have made a final decision to end their lives will experience a kind of blissful calm as they make peace with their decision, which can come across as a sudden elevation in mood or a sense of serenity. This unexpected lifting of mood can be misinterpreted as a sudden 'recovery' from depression (this is tied to our cultural misconceptions that depression is a state of mind that people choose to be in, and can subsequently 'snap themselves out of it').

. . . some individuals who have made a final decision to end their lives will experience a kind of blissful calm as they make peace with their decision, which can come across as a sudden elevation in mood or a sense of serenity.

Mental health professionals often use three criteria to evaluate the severity or immanency of a person's suicidal ideation – intent (how committed a person is to the idea of ending their life), plan (how a person intends to kill themselves and/or settle their affairs after their death) , and means (if a person can access whatever may be needed to make a suicide attempt).

Intervention

It goes without saying that no legal professional should feel they are expected to take on the role of a mental health provider, or that they are somehow responsible for making a decision about a client's well-being on their own. One framework that can be useful when dealing with someone you suspect of being suicidal is QPR Theory[2]. QPR stands for Question, Persuade, Referral; it is used in much the same way as CPR is used for medical emergencies; it is a set of techniques that anyone can learn and use to help preserve life, but is only a precursor to proper professional care. Like CPR, the correct use of QPR requires specific training, which is beyond the scope of this article to provide; the following is only meant as a general overview of the theory.

• Question: Many people, even those with clinical training, are reluctant to ask directly whether someone is suicidal; they fear they are being intrusive, or that if they use "the S word" they will give the person ideas[3]. But in the majority of cases neither is true; if you suspect a person may be suicidal, the chances are high that they have at least considered it. And asking people about their suicidal thoughts, if done in a caring, non-confrontational manner, can show the person that there is someone genuinely interested in their well-being.

• Persuade: Attempting to convince someone to take positive, possibly live-saving actions to help themselves is not always easy; many factors can make it challenging (what kind of help is accessible, the nature of the relationship with the person attempting to persuade them, stigmas about mental illness, etc.) What is important to realize is that a suicide attempt is a process that begins from the moment a person decides that death is an acceptable solution; depending on where they are in that process, a person may be more or less open to considering other options.

• Referral: In this step, you assist the suicidal person in seeking resources, or help them commit to a plan to seek such resources. The important element is to remain a part of this process as much as possible, alongside the suicidal person. This step can include contacting crisis or emergency services for a person, especially if efforts to Persuade were unsuccessful.

If you are interested in learning more, visit the QPR Institute at http://www.qprinstitute.com; the Institute offers an online training course in QPR, or can help your agency connect to a trainer in your area to provide QPR training for your entire staff.

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[1] The ABA Model Rules comments on 1.14 may also be seen at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_14_client_with_diminished_capacity/comment_on_rule_1_14.html

[2] *QPR Gatekeeper Training for Suicide Prevention: The Model, Rationale and Theory.* © Paul Quinnett, 2011, QPR Institute

[3] For example, this question is sometimes hedged by asking if the person is thinking of "harming" or "hurting" themselves. In this author's experience, this phrasing is poor for two reasons; if a person sees ending their life as a relief from their suffering, they may not consider suicide as "harming". Also, some people engage in self-mutilating behaviors (this is more common among teens), and so they are, in fact, "harming themselves", but the intention of these behaviors is not to end the person's life.

Multnomah County's Crossover Youth Practice Model

By Abbey Stamp, LCSW, Juvenile Court Improvement Coordinator, Multnomah County Juvenile Services Division

As many of us who work to stabilize and support delinquent youth know, maltreatment (i.e. abuse—physical or sexual—and/or neglect) is a risk factor for future delinquency. However, child welfare and juvenile justice systems are often unable to work across silos to help youth and families. For this reason, in 2010, Multnomah County joined with the Center for Juvenile Justice Reform at Georgetown University to implement the Crossover Youth Practice Model (CYPM).

Goals of the CYPM include reducing the number of youth placed out-of-home and in congregate care, reduce the disproportionate representation of children of color and to ultimately reduce the number of youth becoming dually-adjudicated in both systems.

In Multnomah County, when youth have concurrent open cases in both child welfare and juvenile justice, they are flagged "crossover." These youth often have long child welfare histories and remain in child welfare custody through adolescence. Crossover youth tend to have challenging family histories, complex needs and are disproportionately African American and female.

Locally, there are approximately 50-60 crossover youth at any given time, and since 2010 almost 200 youth have been identified. Research points to the necessity of multi-system collaboration to address the risks and needs of crossover youth by the use of coordinated case assignment, coordinated case plans, and coordinated case supervision.

The institutionalization of a practice model allows for uniformity in the mission and vision of the two agencies, which then translates into policy development, increased collaboration and resource alignment. This creates a construct for case management, trainings, and continuous quality improvement and ultimately improves the outcomes of youth and families served.

The CYPM expectations of Juvenile Court Counselors and DHS workers are that they consistently meet with the youth, family and community providers, share information, and work to increase placement and treatment stabilization. In addition, it is expected that workers collaborate and plan together as well as attend all delinquency and dependency hearings. Defense attorneys should expect to be included in many meetings and planning activities to help support the youth and family.

Since starting CYPM implementation, we have noted that when workers work together across silos, outcomes for youth can improve. This may seem simple, but growing relationships between systems is challenging yet critical. Ultimately, our hope is to also work on system reforms that will decrease the number of DHS youth that get deeper involved in the juvenile justice system.

To learn more, please contact Abbey Stamp: abbey.stamp@multco.us or 503-988-3383. ●

OYA to Implement Research Tools and New Initiatives

By Kelsey Meredith, Law Clerk

The Oregon Youth Authority (OYA) has developed new assessment tools and research initiatives that will be implemented with youth offenders. County juvenile departments will have access to additional risk assessment data on youth through Oregon's Juvenile Justice Information System beginning in September of 2012.

These initiatives are designed to increase the accuracy of recidivism predictions and the use of data-driven decision making. With these tools OYA hopes to better match youth offenders with the appropriate services, placement, length of placement, and supervision. OYA believes these tools will increase cost efficiency by focusing the most intensive and appropriate services on the highest risk youths. The OYA tools and initiatives are:

• Typology: A need assessment tool that will place the youth in one of six categories based upon personal, family and offense characteristics. The OYA will use the typology information to better match each youth with appropriate services.

• Oregon Recidivism Risk Assessment (ORRA): This risk assessment tool predicts the likelihood that the youth will recidivate with a felony conviction or adjudication within 36 months of release from close custody or commitment to probation. This assessment bases its prediction on information contained in the Juvenile Justice Information System (JJIS) to calculate a score for the youth on a scale of 0 to 100, with 0 being very unlikely to recidivate. Information from the ORRA score will be used to identify appropriate supervision levels, service dosage, the best OYA placements for youths committed to OYA, and possibly to gauge the youth's readiness for parole or other transitions into community settings. This model is estimated to be 70% accurate and more accurate for all sub-populations than the Risk/Need Assessment.

• Oregon Recidivism Risk Assessment-Violent Crime (ORRA-V): This assessment uses the same dataset and methods as the ORRA to predict the likelihood a youth will recidivate

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with a violent felony within 36 months of release from an OYA closed facility or commitment to probation. The OYA can use the ORRA-V scores, along with other information to determine which youths pose the greatest risk to public safety, assist in matching the youth with the best treatment options and length of time in treatment, and inform parole decisions.

• Oregon Nuisance Incident Risk Assessment (O-NIRA): This assessment predicts the likelihood that a youth will engage in at least 4 incidences of problematic behavior within the first six months of placement in closed custody. This assessment uses information from JJIS and the OYA Risk/Need Assessment to make its prediction. O-NIRA predictions will assist OYA in anticipating problematic behavior and reducing its likelihood, making placement decisions, and alerting staff to the need for additional supervision or placement in a less restrictive environment. This assessment is estimated to be 80% accurate.

• Oregon Violent Incident Risk Assessment (O-VIRA): This assessment is designed to predict the likelihood a youth will engage in a violent act within the first six months of placement in close custody. This tool uses the same methods and datasets as O-NIRA. This assessment will assist OYA in anticipating violent behaviors so that an appropriate level of supervision and support is provided; thereby reducing the risk these behaviors pose to others in OYA custody. This assessment is 70% accurate.

• Population forecasts: This program studies the population of youths in OYA community placement, closed custody, and the county population in order to predict the likely numbers of youth who will come under OYA supervision.

• The Youth Reformation System: This data system aims at providing youths with the most appropriate treatment and programs by comparing a current youth to prior youth. Many youth in the OYA system today have comparable characteristics, charges and backgrounds as youths previously under OYA supervision. This system essentially finds a "twin" or multiple twins for a current youth, meaning youth that are highly similar statistically. The OYA will then examine what services were provided to the twins. It will provide information to parole and probation staff regarding services that have been more or less successful in preventing recidivism for youths with a specific profile so that OYA staff can choose treatment and placement options that have had greater success.

• The Program Evaluation Continuum (PEC): This ambitious program intends to provide real time review of outcome data to allow continuous assessments of the effectiveness of treatment programs. The program will look at service matching, cost-effectiveness/ cost-avoidance, and treatment progress. This program could allow for continual evaluation of youth progress and OYA programing.

With these tools OYA analysts will be in a position to evaluate the effectiveness of many OYA treatment programs. This information will provide critical information that will be used to inform treatment programs, improve program implementation, and identify youths most likely to benefit from specific services. Attorneys and youth advocates could use this information to recommend specific treatment, services, or length of treatment for youths.

Details of many of these tools are available at http://www.oregon.gov/OYA/rpts_pubs.shtml ●

Supreme Court Rules Mandatory Life Without Parole Sentences for Juveniles Violate 8TH Amendment.

News Release from the National Association of Criminal Defense Lawyers

Washington, DC (June 25, 2012) – The U.S. Supreme Court today announced that a scheme requiring mandatory sentences of life without parole for juveniles violates the Eighth Amendment's prohibition against cruel and unusual punishment, regardless of the nature of the offense. The decision came down in two consolidated murder cases in which the defendants were 14 years old at the time of the offenses, *Miller v. Alabama*, 10-9646, and *Jackson v. Hobbs*, 10-9647. It is a 5-4 decision authored by Justice Kagan, and joined by Justices Kennedy, Ginsburg, Breyer, and Sotomayor.

In ruling that such mandatory schemes are unconstitutional, the majority explained that "[a]lthough we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." The majority relied upon earlier opinions in the juvenile context and the science concerning the differences between juveniles and adults. "The evidence presented to us in these cases indicates that the science and social science supporting *Roper*'s and *Graham*'s conclusions have become even stronger.…*Roper* and *Graham* emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes."

Roper v. Simmons, 543 U.S. 551, was the 2005 Supreme Court decision invalidating the death penalty for all juvenile offenders

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« *Life Without Parole continued from previous page*

under the age of 18. And *Graham v. Florida*, 130 S.Ct. 2011 (and its companion case, *Sullivan v. Florida*) yielded the 2010 Supreme Court decision holding that life without parole for juveniles in non-homicide cases runs afoul of the Eighth Amendment's prohibition against cruel and unusual punishment. In those cases, the Court had left unanswered the question resolved by today's decision in *Miller.* As a result of its findings in *Roper*, *Graham* and now *Miller*, the majority today said, "we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon."

"Today's decision in *Miller* is a victory for the Eighth Amendment as well as for the all-important judicial discretion that such legislatively-enacted mandatory sentencing schemes undermine," explained NACDL President Lisa Wayne. "With today's Supreme Court decision, America's juvenile justice system became a little bit more humane and grounded in the scientifically demonstrable differences between juveniles and adults."

According to the majority opinion in *Miller*, "*Graham*, *Roper*, and our individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles. By requiring that all children convicted of homicide receive lifetime incarceration without possibility of parole, regard¬less of their age and age-related characteristics and the nature of their crimes, the mandatory sentencing schemes before us violate this principle of proportionality, and so the Eighth Amendment's ban on cruel and unusual pun¬ishment."

Notably, in a separate concurrence, Justice Breyer, joined by Justice Sotomayor, expressed the view that in order for Mr. Jackson, the defendant in the companion case to *Miller* decided today, to even be eligible for a sentence of life without parole, he would have to be found to have killed or intended to kill the victim in his case, and not simply be found guilty under a felony murder, or transferred intent, doctrine. In the latter circumstance, this concurrence expresses the view that *Graham* should control and the juvenile defendant would be ineligible for a sentence of life without parole.

A copy of the opinion is available here. ●

Reprinted from the Stanford Report, May 24, 2012

Stanford Psychologists Examine How Race Affects Juvenile Sentencing

As the Supreme Court considers whether to further limit sentences given to juveniles, new research by Stanford psychologists shows how an offender's race shifts people's support for severe punishment.

By Brooke Donald

When it comes to holding children accountable for crimes they commit, race matters.

According to a new study by Stanford psychologists, if people imagine a juvenile offender to be black, they are more willing to hand down harsher sentences to all juveniles.

"These results highlight the fragility of protections for juveniles when race is in play," said Aneeta Rattan, lead author of the study, which appears this week in the journal *PloS ONE*.

Historically, the courts have protected juveniles from the most severe sentences. It has been recognized that children are different from adults – they don't use adult reasoning and don't have impulse control to the same degree.

The Supreme Court has barred the death penalty for juveniles and, in 2010, said life without parole for non-homicide crimes violated the Constitution's ban on cruel and unusual punishment.

Currently the court is considering two cases regarding juveniles involved in murders who were sentenced to life without parole. The justices are weighing whether they will further limit harsh sentences for young people.

The Stanford research was inspired, in part, by the cases most recently before the high court, said Jennifer Eberhardt, senior author of the study.

"The statistics out there indicate that there are racial disparities in sentencing juveniles

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Stanford News Service

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who have committed severe crimes," said Eberhardt, associate professor of psychology. "That led us to wonder, to what extent does race play a role in how people think about juvenile status?"

The study involved a nationally representative sample of 735 white Americans. Only white participants were used because whites are statistically overrepresented on juries, in the legal field and in the judiciary.

The participants were asked to read about a 14-year-old male with 17 prior juvenile convictions who brutally raped an elderly woman. Half of the respondents were told the offender was black; the other half were told he was white. The difference in race was the only change between the two stories.

The researchers then asked the participants two questions dealing with sentencing and perception.

The first: To what extent do you support life sentences without the possibility of parole for juveniles when no one was killed?

The second: How much do you believe that juveniles who commit crimes such as these should be considered less blameworthy than an adult who commits a similar crime?

The study found that participants who had in mind a black offender more strongly endorsed a policy of sentencing juveniles convicted of violent crimes to life in prison without parole compared to respondents who had in mind a white offender.

"The fact that imagining a particular target could influence your perceptions of a policy that would affect an entire class of people, we think, is pretty important to know," Eberhardt said.

The black-offender group also rated juvenile offenders as more similar to adults in their culpability than did respondents in the white-offender group.

"Race is shifting how they are thinking about juveniles," Eberhardt said. "So the protected status the offenders have as juveniles is threatened."

The study took into account racial bias and political ideology, yet neither accounted for these effects.

"The findings showed that people without racial animus or bias are affected by race as much as those with bias," said Carol Dweck, another of the study's authors.

"That suggests they believe black offenders will likely be the same when they're adults but white offenders are in a developmental period and could be very different adults. This starts breaking down the protections against the most severe sentences," said Dweck, the Lewis and Virginia Eaton Professor in the Department of Psychology.

The study's authors are hopeful the findings will spur a conversation about how race affects sentencing of juveniles.

"We think about the legal world as having rules and you apply the rules equally to everyone," said Rattan, who is a postdoctoral research scholar in the Department of Psychology. "What we're really showing is that there's a potential for that to not be the case."

"And that the rules themselves may be biased already," Dweck added.

The paper, "Race and the Fragility of the Legal Distinction Between Juveniles and Adults," by Aneeta Rattan, Cynthia S. Levine, Carol S. Dweck and Jennifer L. Eberhardt, was published in *PloS ONE* on May 23.

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Annie E. Casey Foundation Expanding Detention Alternative Program

By Kelsey Meredith, Law Clerk

The Annie E. Casey Foundation (Casey) announced an ambitious planned expansion to its Juvenile Detention Alternative Initiative (JDAI), which has worked to reduce the use of pre-adjudication detention and reduce the racial disparities in detention rates in jurisdictions around the country. Multnomah County, OR, was one of the early model sites for the JDAI, and now 10 eastern Oregon counties are adopting detention reforms, as well.

The new initiative aims to address the "deep end" of the juvenile justice system and reduce the commitment of youth to correctional and other residential facilities. Casey is implementing this program because it believes reducing reliance on confinement is vital to the future of the juvenile justice system.

The expanded JDAI will promote reform through public education activities and a partnership with the Pew Center to identify new policy reforms. The new initiative will work more closely with the states by establishing two JDAI pilot sites to undertake comprehensive reforms and by providing technical assistance to other non-pilot JDAI sites, including the development of new analytic tools and best practices guides. More information is available at: http://www.aecf.org/~/media/Pubs/Other/J/JDAINewsSpring2012/JDAINewsSpring2012.pdf ●

Pennsylvania Bans Shackling of Youth in Juvenile Court

By Kelsey Meredith, Law Clerk

The Governor of Pennsylvania signed Senate Bill 817 into law at the end of May. SB 817 bans the shackling of youths in juvenile court, unless there are extreme or exceptional circumstances.

This legislation is the result of reforms emerging from the Luzerne County Juvenile Court Judges scandal. In addition to juvenile judges taking kickbacks for placing minor juvenile offenders in certain institutions, youth were routinely and unnecessarily shackled. In one case a youth, who was "convicted" for a MySpace parody of a school official, was shackled and dragged from the courtroom even though she had no previous legal problems and was not a physical threat or a flight risk.

Senate Bill 817 reinforces a juvenile court rule adopted last year by Pennsylvania's Supreme Court. The full story can be found at http://www.jlc.org/blog/shackling-youth-strip-searching-adults-pa-legislature-leans-forward-while-us-supreme-court-lean ●

Learn more about who we are and what we do at: www.youthrightsjustice.org

DOJ Issues Rules for Implementation of Prison Rape Elimination Act

For Facilities Including Juvenile Detention and Correctional Facilities

By Kelsey Meredith, Law Clerk

The Department of Justice (DOJ) has issued a final rule (28 C.F.R. pt. 115) to prevent, detect, and respond to sexual abuse in confinement facilities. These standards were created pursuant to the Prison Rape Elimination Act (PREA) of 2003, which includes juvenile detention centers and juvenile correctional facilities within its definition of confinement facilities. Congress unanimously passed the Act out of concern for the severe consequences to the victims, security of correctional facilities, and safety and well-being of communities at large. When PREA was passed, the legislation established a National Prison Rape Elimination Commission to recommend to the Attorney General national standards to be published. In general, these national standards are not outcome-based, but rather focus on policies and procedures.

The major provisions affecting juveniles (§§ 115.311-.393) include designating a PREA point person with sufficient time and authority to coordinate compliance efforts, requiring facilities to develop and document a plan to provide adequate levels of staffing, preventing the placement of inmates under the age of 18 under adult court supervision from coming into unsupervised contact with adult inmates, prohibiting cross-gender pat-down searches of both male and female residents in juvenile facilities, and requiring screening of inmates for risk of being sexually abused or sexually abusive.

The PREA requires "best efforts" in providing adequate levels of staffing. In secure juvenile facilities, these staffing standards are mandated to a minimum of security staff ratios of 1:8 during resident waking hours and 1:16 during resident sleeping hours. Because of funding concerns, however, this requirement will not go into effect until October 2017. When youths under age 18 are held under adult court supervision and incarcerated, these standards impose three requirements: (1) no inmate under 18 may be placed in a housing area where contact in a common area will occur with adult inmates, (2) outside of housing areas, agencies must maintaining "sight and sound separation" or provide direct staff supervisions, and (3) agencies must make best efforts to avoid placing youthful inmates in isolation to comply with provisions (1) and (2).

This rule is the first federal effort to set standards aimed at protecting inmates in all confinement facilities. It is immediately binding on the Federal Bureau of Prisons.

As for states, those that do not comply with the standards are subject to a five percent reduction in funds that they would otherwise receive for prison purposes, unless the governor certifies that five percent of such funds will be used to ensure compliance in the future. To assist federal, state and local agencies, the DOJ has funded the National Resource Center for the elimination of Prison Rape to serve as a national resource for online and direct support. The final rule may be read in its entirety at www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf. ●

Justice Policy Institute Report Argues That Police in Schools Do More Harm Than Good

By Mark McKechnie, Executive Director

The Justice Policy Institute released "Education Under Arrest: The Case Against Police in Schools," in November 2011. As defense attorneys for juveniles and courts can attest, more students are being arrested by police and charged with offenses that

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stem from incidents that schools once handled internally. Part of the cause for this is the placement of police officers, called School Resource Officers (SROs), in school buildings. The report can be found at: http://www.justicepolicy.org/research/3177.

The JPI report focuses on the high costs and negative impacts on students that result from the use of SROs. Some research shows that SROs may spend only half of their time on law enforcement activities and the remainder on activities such as counseling or teaching. The JPI argues that schools would be better served hiring staff who are trained and can focus more directly on educational and supportive activities. The report shows that SROs may be higher paid, and therefore more expensive, than other school staff, such as counselors and teachers.

The presence of SROs can also have expensive consequences for courts and juvenile departments. A study published in the Journal of Criminal Justice showed dramatically higher arrest rates in schools with an SRO than in schools without an SRO in every category except weapons charges. The study found that schools with SROs had arrest rates that were five times higher for offenses such as disorderly conduct, compared to schools without SROs. The JPI report cites the experience of Birmingham, AL, which found that 96 of the students referred to juvenile court were for misdemeanors or minor violations.

The longer-term consequences of higher rates of law enforcement involvement can be particularly detrimental to students of color. Students of color experience higher rates of serious discipline, such as suspension and expulsion. The problem is compounded when school infractions also result in law enforcement contact and juvenile court involvement. The report states that two-thirds to three-fourths of youth who are confined in a juvenile justice correctional facility drop out within a year of returning to school, and less than 15 percent complete high school or an equivalent.

The evidence that SROs keep schools safer is questionable, at best. The report points out that schools are the safest place to be for children and the safest they have been for 20 years. The CDC found in a study conducted between 1992 and 1994 (a period when juvenile crime rates were much higher than they are now) that students in schools had less than a 1 in 1,000,000 chance of death due to homicide or suicide at school, and their risk of death by homicide was 40 times greater outside of school than in school.

While reported crimes in schools dropped from 1997 to 2000, at the same time that the number of SROs increased, the rate of reported crimes in schools continued to drop significantly even as schools cut back on SROs to save money.

Based upon the numerous negative results linked to the presence of SROs in schools and their questionable value in protecting student safety, the JPI recommends that schools discontinue placing SROs in schools. "Schools can effectively respond to misconduct or even more serious offenses like theft without SROs. Through more effective policies and practices, schools can avoid subjecting youth to the negative effects of the justice system and the lost educational opportunities that go with it." ●

Case Summary

By Sydney A. Boling, Law Clerk

Henry A. v. Willden, __P3d__ (9th Cir. May 4, 2012)

Plaintiffs, foster children in Clark Co., Nevada, appeal the dismissal of their claims against county and state officials under 42 U.S.C § 1983, alleging systemic failures of the Clark County foster care system to adequately meet their health and safety needs, resulting in injuries. Examples of the allegations include failure to approve important medical procedures, failure to provide foster parents with required paperwork to fill necessary prescriptions, and failure to investigate reports of abuse and neglect of children while in foster care. Plaintiffs allege violation of their substantive due process rights under the Fourteenth Amendment and violations of various federal statutory rights. The 9th Circuit reversed the decision of the district court in part, affirmed in part, and remanded for further proceedings.

Addressing the alleged substantive due process violations, the Court found improper the ruling that defendants are entitled to qualified immunity on the claims for lack of medical attention and services. The Court reversed the ruling on claims alleging injunctive relief alone and injunctive relief in addition to damages noting that qualified immunity is not available as a defense in §1983 claims seeking these remedies.

As to the claims for damages alone, the Court found the analysis of the district court too narrow, stating that it should have "(1) determined the contours of a foster child's clearly established rights at the time of the challenged conduct under the 'special relationship' doctrine…, and (2) examined whether a reasonable official would have understood that the specific conduct… violated those rights." The Court went on to find the rights claimed by plaintiffs and allegedly violated by defendants were in fact clearly established by case law at the time of the alleged misconduct and "that a reasonable official would have understood that at least some of the specific conduct…violated those rights."

The Court also found the district court improperly disregarded the "state-created danger exception" for state liability under the Fourteenth Amendment by failing to use the law of the circuit, which holds the exception applies when "the affirmative actions of a state official created or exposed an individual to a danger which he or she would not have otherwise faced." Furthermore, the court noted that the doctrine has been held to apply to foster children where there is a known danger of abuse.

Addressing the liability of the state officials, the Court found abuse of discretion by the

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district court in failing to allow plaintiffs to amend their complaint. The Court noted that the allegations suggest a causal connection between the actions of the defendants and the injuries to the plaintiffs and that on remand, plaintiffs should be allowed to amend the complaint to further clarify allegations to each individual defendant.

As to the federal statutory rights, the 9th Circuit reversed the decision of the district court regarding the case plan provision of the Child Welfare Act (CWA), which requires states to create case plans for each foster child when receiving federal funding, and the records provision of the CWA, which requires the state to provide updated health and education records to foster parents. The Court found the provisions enforceable as individual rights through §1983.

As to the guardian ad litem provision of Child Abuse Prevention and Treatment Act (CAPTA), the 9th Circuit upheld the decision of the district court and found that as a matter of first impression, the provision does not create an individual right enforceable through §1983. Lastly, the Court upheld the decision that the CAPTA and Individuals with Disabilities Education Act (IDEA) provisions, which require states to refer certain children to early intervention services, are not enforceable as the language in the CAPTA provision does not unambiguously confer an individual federal right, and the IDEA comprehensive enforcement scheme forecloses enforcement through §1983. However, on remand plaintiffs may pursue a claim under IDEA's express cause of action. ●

Resources

National Council of Juvenile and Family Court Judges Publishes Updated Data on Disproportionality

Due to the ongoing need for dialogue surrounding the most currently available statistics on disproportionality, the NCJFCJ has published an updated *Disproportionality Rates for Children of Color in Foster Care Technical Assistance Bulletin*. This *Bulletin*, released May 2012, utilizes 2010 Adoption and Foster Care Reporting System (AFCARS) and 2010 census data to calculate current disproportionality indexes for every state and select Model Courts across the country. Access the full Bulletin at: http://www.ncjfcj.org/sites/default/files/Disproportionality%20Rates%20for%20Children%20of%20Color%202010.pdf

Oregon Housing and Community Services Resource Web Page

The Resources and Links page at Oregon.gov has links to several statewide resources, including housing assistance, food assistance, and even legal resources. Click here to go directly to the Housing and Community Resources page: http://www.oregon.gov/OHCS/COM_INeedHelp.shtml ●

Save the Date

NCJFCJ 75th Annual Conference

July 15-18, 2012

Sheraton New Orleans Hotel

New Orleans, LA

The conference will feature a wide range of juvenile and family law topics including child abuse and neglect, trauma, custody and visitation, judicial leadership, juvenile justice, domestic violence, drug courts, and substance abuse. It will focus on the theme, Tomorrow's Courts Today: Back to the Future in the Big Easy, offering sessions with an emphasis on looking at the use of technology and the future of the court system.

http://store.ncjfcj.org/Core/Events/eventdetails.aspx?iKey=CACX1207LA&TemplateType=A

Through the Eyes of a Child XV

Model Court Day: Summit on Child Abuse and Neglect

August 5–7, 2012

The Juvenile Judges' annual conference, "Through the Eyes of a Child, XV" will occur August 5-6 this year, a week earlier than usual. It will be followed by the sixth annual "Model Court Day: Summit on Child Abuse and Neglect," August 7, 2012. Judges are encouraged to invite up to 8 members of their local Model Court Team to join them for Model Court Day. Save the Date Flyers have been sent to the presiding judges and trial court administrators.

35th National Child Welfare, Juvenile, and Family Law Conference

August 14-16, 2012

Historic Palmer House Hilton

Chicago, Illinois

Conference brochure available May 2012. www.NACCchildlaw.org

Juvenile Law Training Academy

October 15-16, 2012

Valley River Inn

Eugene, Oregon

http://www.ocdla.org/seminars/shop-seminar-index.shtml ●

The Fourth Annual

Wine & Chocolate Extravaganza

Presented by Tonkon Torp LLP

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